



COMMONWEALTH OF KENTUCKY
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OAG 17-023

October 17, 2017

Subject: Whether a mayor of an urban-county government can obligate county-owned property by consenting to registration of the property with the Kentucky Military Heritage Commission without first obtaining the authorization of the Urban County Council.

Requested by: Janet M. Graham
Commissioner, Department of Law, Lexington-Fayette
Urban County Government

Written by: Marc G. Farris

Syllabus: The mayor could not consent to the registration of the county's property as military heritage objects without the approval of the Urban County Council, the "appropriate governing body" of the county.

Statutes construed: KRS 67A.060; KRS 67A.070; KRS 67.080

OAGs cited: OAG 77-692

Opinion of the Attorney General

You have asked whether a mayor of an urban-county government—specifically, the Lexington Fayette Urban County Government ("LFUCG")—may obligate county property by consenting to the registration of the property as a military heritage object. For the reasons set forth below, we do not believe that a mayor has such authority under the LFUCG Charter and the express terms of the

Military Heritage Commission Historic Military Sites and Objects Applications for Registration.

Background

We understand from your letter that in 2003, a private citizen nominated the General John Hunt Morgan and John C. Breckinridge Statues (the "Statues") for registration as military heritage objects by completing two Applications for Registration (the "Applications") and submitting them to the Kentucky Military Heritage Commission (the "Commission"). In accordance with the Commission's regulations, the Applications include a section for the governing entity of the "[p]ublic site/object owner" to indicate its consent to the designation of the site or object. That provision states, in part, that "[c]onsent to list the above described object/site on the Kentucky Military Heritage Site and Object Register *has been given by the appropriate governing body, and a copy of the document authorizing said signature is attached hereto*" (emphasis added). The Application further states:

[LFUCG, as the governing entity,] fully understands the rights and responsibilities concerning the nomination of this property for the Kentucky Military Heritage Site and Object Register, has been provided with a copy of the statutes and regulations concerning the Kentucky Military Heritage Site and Object Register, and has had an opportunity to review over the same with independent legal counsel.

On June 4, 2003, then-Mayor Isaac signed the Applications for the Statues beneath that statement, on the line labeled "Authorized Signature." On May 6, 2004, the Military Heritage Commission designated the Statues as "military heritage objects." The Commission's procedures are set forth in KRS 171.784 and its implementing regulations, 202 KAR 8:030. Any person or organization may nominate an item for designation as a military heritage object by completing an Application. KRS 171.784(2). The Application must disclose, among other things, the consent of the owner of the object. 202 KAR 8:030, § 2(2)(1) ("The 'Military Heritage Commission Historic Military Sites and Objects Application for Registration' form shall contain the following information: ... (1) Owner consent.").

Moreover, the Commission's regulations require that it solicit the input of the owner, if the object is public property and the Application is completed by someone other than the owner:

If public property if [sic] nominated by someone other than the owner, review staff shall:

- (a) Immediately notify the owner of the property or object of the receipt of the application by the commission; and
- (b) Inform the owner that he may submit a written agreement with, or objection to, the application.

202 KAR 8:030, § 2(8). Once the Commission designates property as a "military heritage object," the "[d]estruction, removal, sale, gift, loan, or significant alteration" of the object without Commission approval "is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense." KRS 171.788.

Analysis

We must determine whether Mayor Isaac was authorized to sign the Applications on behalf of LFUCG. We understand that LFUCG records do not indicate that the Applications were presented to the Council before Mayor Isaac signed them, and that the Council, as the appropriate governing body, therefore did not give its consent to the Applications, or to Mayor Isaac's signature on the Applications. We conclude that because Mayor Isaac did not have the Council's approval, she did not have the authority to sign the Applications on behalf of LFUCG. Our reasoning is guided by the statutes concerning the structure of urban-county governments, as well as by the LFUCG Charter and the text of the Applications.

As the legislative body of an urban-county government, LFUCG Council exercises the powers delegated to fiscal courts under Kentucky law. See KRS 67A.060(1) ("Urban-county governments may exercise the constitutional and statutory rights, powers, privileges, immunities and responsibilities of counties and cities of the highest class within the county. . . ."); KRS 67A.070 (describing

the ordinance powers of urban-county governments). While we are not aware of any provision in state law that expressly addresses the Mayor's authority to sign the application without Council approval, Kentucky law generally vests the power to control county property in the fiscal court. See generally KRS 67.080(2)(b) (providing that the fiscal court has the authority to "cause the construction, operation, and maintenance of all county buildings and other structures"); OAG 77-692 ("It is up to the fiscal court to regulate and control the fiscal affairs and property of the county."). Thus, the Council has general authority over LFUCG's property.

In addition, the LFUCG Charter provides that the Mayor "[s]hall sign all written contracts or *obligations* of the Merged Government and administer all capital improvement projects *authorized by ordinance*." LFUCG Charter § 5.04(E) (emphasis added). The Charter therefore permits the Mayor to sign only those agreements or obligations that the Council has approved. While the Application is not a contract, it does constitute a written obligation that was not authorized by ordinance. Importantly, the Application committed LFUCG to supporting, or at least not objecting to, the designation of the Statue as a military heritage object. It therefore constituted an obligation made by LFUCG because it required the property to be subject to consideration by the Commission. See Black's Law Dictionary (10th ed., 2014) (defining "obligation" to include "anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality"). Moreover, once the Statues were designated "military heritage objects," the Council was further obligated to seek the approval of the Commission before altering or moving them. We do not believe that the Mayor could consent to cede that control over LFUCG property on behalf of the Council, without first seeking the Council's consent.

As a result, the Applications, as submitted, were incomplete, and their requirements were not met. Consent to the designation of the Statues had not "been given by the appropriate governing body," the LFUCG Council, as the Applications required. In addition, the Council—LFUCG's governing body—was not "provided with a copy of the statutes and regulations concerning the Kentucky Military Heritage Site and Object Register," as mandated by the Applications. The Council also did not have "an opportunity to review over [those statutes and regulations] with independent legal counsel." The Applications also

required the applicant to append "a copy of the document authorizing" the signature of the person providing consent on behalf of the owner of the property. No such document could have been included with the Applications here, because there was no ordinance or resolution authorizing the Mayor to sign them.

In sum, we conclude that the Mayor was not authorized to sign the Applications and thereby consent to the designation of the Statues as military heritage objects without the prior approval of the LFUCG Council.

Sincerely,

ANDY BESHEAR
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "Marc G. Farris", written in a cursive style.

Marc G. Farris
Assistant Attorney General